



POLICE / PROSECUTOR UPDATE



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A defendant's Sixth Amendment right to counsel guarantees the defendant the right to assistance of counsel once adversary judicial proceedings have been initiated against him. In Indiana, criminal proceedings begin with the filing of an indictment or information. If police initiate interrogation after a defendant's assertion of his Sixth Amendment right to counsel, any waiver of the defendant's right to counsel for that police-initiated interrogation is invalid. The assertion of one's Sixth Amendment right to counsel normally occurs at the initial hearing. But not necessarily so. In a recent case, an information was filed and an arrest warrant was issued for the defendant on the same day. That same day, an attorney contacted the Sheriff's Department to inform them that the defendant would turn himself in that afternoon. He did so. An officer *Mirandized* him, and he made an incriminating statement in response to police questioning. The court of appeals held this statement was not admissible at trial. It further stated that when a defendant, whose Sixth Amendment right to counsel has attached (filing of indictment or information), has retained an attorney and that attorney makes his representation of the defendant known to the State, the defendant's Sixth Amendment right to counsel has been invoked. The court could see no basis for distinguishing the facts of this case from one in which a defendant requests counsel at the initial hearing. The court noted, however, that in situations in which a third party has retained an attorney for the defendant *unknownst to the defendant*, and the attorney contacts the police without the defendant's knowledge, there are no Sixth Amendment implications.

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One exception to the search warrant requirement is a valid "victim or suspect" search. Generally, police may enter a home without a warrant to aid a person in need of assistance. The need to preserve or protect life justifies what would otherwise be illegal absent the emergency. Officers have an interest in assuring themselves that the home is not harboring other persons who are dangerous and who could attack them. Thus, law enforcement officers may make a cursory inspection of those spaces where a person may be found to secure the crime scene and

ensure their safety. Furthermore, police officers may seize any evidence that is found in plain view during the victim-or-suspect search.

In a recent case, police responded to a report of a shooting at the defendant's apartment. One officer arrived within moments, and the defendant admitted him into the apartment. He observed a gunshot victim lying on the floor in a hallway closet. He then performed a search, looking in each of the rooms for other injured persons or a suspect. He did not look in closets or under beds. Within two minutes, several other officers arrived. They questioned persons at the scene and tended to the victim. None of these officers searched the bedroom closets or under the beds. Shortly thereafter another officer arrived. About thirty minutes after her arrival and after the victim had been removed from the scene, the officer conducted another search, including closets and under beds. The search recovered contraband.

The court of appeals ruled the contraband was not admissible because the scene had been secured before the search which recovered the contraband. The first officer's objective, after seeing that the victim was being cared for, was to secure the scene. He testified he did not look in closets or under beds but was satisfied no one was in the rooms. When the next group of officers arrived, they were not told to conduct a search. It was not until thirty minutes after the final officer arrived that the closets were searched. Thus, the crime scene was secured, and the last search could not be justified by any emergency.

While a victim-or-suspect search must be prompt, its timing, while a significant factor, is not in and of itself dispositive. Rather, courts consider such factors as the number of officers on the scene and their actions before the search is performed; the nature of the search, such as whether it is investigative; and the timing of the search.

Cases: *Finney v. State*, ___ N.E.2d ___ (Ind. Ct. App., 4/17/02)
Vanzo v. State, 738 N.E.2d 1061 (Ind. Ct. App. 2000)